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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
NEWARK VICINAGE**

**EAST BRUNSWICK TOWNSHIP  
BOARD OF EDUCATION**

Plaintiff,

vs.

**D.S. and M.S. o/b/o/ A.S.;**

Defendants.

**CIVIL ACTION**

**Case No.: 2:21-cv-08279 (BRM-TJB)**

**CERTIFICATION OF  
DEFENDANT, M.S., IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT**

I, M.S., do hereby certify under penalty of perjury, the following:

1. I am the mother of A.S., and a Defendant/Counterclaimant in the above-entitled action. As such, I am fully familiar with the facts of this case.
2. My husband, D.S., is another Defendant/Counterclaimant in this action.

3. A.S. was a female classified student in the East Brunswick school District located in East Brunswick, New Jersey.
4. The school district failed to meet A.S.'s needs, the district did not conduct triennial evaluates for at least nine years and went without providing her with a speech evaluation for eleven years, despite her being classified as Communication Impaired. The district did not offer her an educationally and socially appropriate placement, thereby denying her FAPE in the LRE. When the district did finally evaluate her in 2018, her scores showed she had regressed. Therefore, my husband and I had no choice but to unilaterally place her at the Lewis School and we provided the district with the appropriate 10-day unilateral placement notice.
5. A.S. was determined to be eligible for special education and related services in October 2005, when she was in preschool. After preschool, she was classified as Communication Impaired.
6. In 2009, A.S. was then classified as Other Health Impaired – Pervasive Developmental Disorder-Not Otherwise Specified and Attention Deficit Hyperactivity Disorder after a re-evaluation eligibility meeting.
7. Then, two years later, A.S.'s classification was changed back to Communication Impaired. She was evaluated by the district in 2011, and not again until 2018 at the recommendation of A.S.'s physician, the fact that

for several years, A.S. had not made any significant or meaningful educational progress and she had not met any of her IEP goals and objectives.

8. A.S.'s classification was apparently changed because she had been in a self-contained class, up until the 2018-2019 school year, and the only way the district would allow her to be placed in general education classes to develop her socialization skills was to change her classification, despite her disabilities remaining the same.
9. A.S. has also been diagnosed with General Anxiety Disorder, Disruptive Mood Dysregulation Disorder, Attention Deficit Hyperactivity Disorder-Inattentive Type, Expressive Language Disorder, and a Specific Learning Disability in reading comprehension and written expression.
10. My husband and I trusted the case managers and professionals to provide the most appropriate education plan for A.S., which trust was a mistake as they mislead us and A.S. was not provided with a meaningful education and did not receive the services she was entitled to receive.
11. A.S. was bounced around between self-contained classes and a general education setting with support. Even though her grades often appeared good, she was not learning or progressing as she remained at the level of an elementary school student while in high school. We felt that the district



inflated her grades and were just passing her through rather than giving her an appropriate education. The district had not evaluated her for so many years and yet, kept telling us that the evaluations would not change her program and placement. The district could not have provided her with an appropriate IEP for all of those years since it did not really know what levels she was actually on. The district denied A.S. FAPE in the LRE.

12. My husband and I had to hire private tutors and our own speech therapists, which the district came to rely upon rather than providing A.S. with the services she needed in school. These tutors and therapists were very expensive.
13. Members of A.S.'s Child Study Team reiterated to me that they did not believe that A.S. should be pulled out of class for speech, occupational therapy, and other necessary therapies as they indicated the focus needed to be on academics. This was the district's excuse as to why it did not provide related services to A.S., such as speech language services and counseling.
14. I was told by an administrator that the district did not have the budget to meet A.S.'s needs.
15. I had requested a one-to-one aide but was advised that A.S. was not entitled to one.

16. My husband and I repeatedly expressed our concerns and yet, school staff regularly assured us that A.S. was doing well and they could fix things.
17. After evaluations were done, after the lapse from 2011-2018, my husband and I came to realize the real extent of A.S.'s issues and deficits and the failures by the school district, and thus placed her at the Lewis School.
18. Lisa A. Kotler, M.D., of Hassenfeld Children's Hospital at NYU Langone performed a Diagnostic Psychiatric Evaluation on August 27, 2018, paid for by my husband and me.
19. Dr. Kotler diagnosed A.S. with Generalized Anxiety Disorder, Disruptive Mood Dysregulation Disorder, ADHD- inattentive subtype, specific learning disorder with impairment in reading and written expression and a History of Expressive Language Disorder.
20. Dr. Kotler indicated A.S. needed cognitive behavioral therapy for anxiety and sadness.
21. Connor Scott, M.Ed., LDT-C, performed an Educational Evaluation on October 11, 2018, and October 26, 2018, for the district.
22. Mr. Scott acknowledged based on his own evaluation that in-class support in a general education classroom was not an academically appropriate placement for A.S.

23. For example, Mr. Scott reviewed the reading goals of the October 24, 2016 IEP, and confirmed that it said that A.S. should be reading at an 8<sup>th</sup> grade level. Mr. Scott confirmed that he did not believe that A.S. could achieve the reading goals because the IEP had her reading at a level much higher than what she was at.

24. Mr. Scott confirmed that it was accurate to say that in 2011 she was reading at a first-grade level, in 2016 she was reading at a mid-third grade level, and in 2018 she went down to reading at a second and third grade level. These scores showed that A.S. had not progressed and had actually regressed.

25. Mr. Scott confirmed that his review of the progress reports for each of those school years showed that A.S. did not meet any of the goals and objectives in her IEPs from 2016-2019. The reports also specifically stated that A.S. did not meet any of her math goals and objectives in those years.

26. According to A.S.'s medical providers, she required a smaller more structured learning environment where reading, reading comprehension, and language disabilities could be addressed.

27. In fact, Dr. Kotler wrote a letter to the child study team dated June 25, 2019, which indicated, A.S. "has continued to have focus difficulties and academic struggles in her current school setting, despite getting a number of academic accommodations. I am in support of her attending a specialized school for



students with learning disorders and ADHD such as the Lewis School. This school can address [A.S.'s] learning, focus and emotional needs in a small class setting.” (3T177:8-11; P-48; See paragraph 121 of Statement of Undisputed Material Facts).

28.A.S.'s therapist, Dr. Rachel Strohl from Stress and Anxiety Services of New Jersey indicated in her letter dated June 24, 2019, that A.S. had attended weekly private therapy since September 5, 2018. Dr. Strohl also noted that A.S. would greatly benefit from an out of district placement that specialized in language-based learning disabilities and offers a smaller, more individualized classroom setting, such as The Lewis School. (P49)

29.Due to the fact that the district failed to provide the appropriate educational setting for A.S. and their attorney was not responsive to requests from our attorney, we had no choice but to unilaterally place A.S. and seek full reimbursement, transportation, fees and other costs from the district.

30.We properly sent our 10-day unilateral placement notice to the district.

31.On June 26, 2019, we filed for due process and a full hearing was conducted.

32.I testified at the due process hearing. The relevant portions of my testimony are included within the Statement of Undisputed Material Facts, and my entire testimony is contained in the trial transcripts submitted to this Court in [ECF, Doc. No.: 9, Attachment 15].

33. On January 5, 2021, we obtained an Order from Judge Crowley in the Office of Administrative Law in our favor, whereby Judge Crowley Ordered reimbursement for the unilateral placement, continued placement at the Lewis School, and compensatory education in the amount of fifty hours.

34. The district still has not fully complied with Judge Crowley's Order or that of Judge Martinotti.

35. As a direct and proximate result of the district's failure to provide A.S. with FAPE in the LRE, its failures to comply with Judge Crowley's and Judge Martinotti's Orders, and responding to the district's baseless appeal, we have had to expend a lot of money in expert fees and costs, attorney's fees and costs, additional tutoring, and tuition. The district still refuses to provide us with a monetary equivalent of the fifty hours of compensatory education, without which A.S. will not be remedied.

36. In fact, the district was able to save money because A.S. was entitled to stay at the Lewis School and be provided with transportation by the district through an IEP as per Judge Crowley's Order until the end of the year in which she turned age 21. However, despite the district informing me that there was no way that she would be able to attend college, A.S. applied and was accepted to High Point University. She started this past summer of 2022, and she is currently a freshman there and she is enrolled in their



academic support program called Learning Excellent Program, which is a significant added cost. The Lewis School was able to prepare her sufficiently that she could get into this University.

37. Although the district is trying to argue that Judge Crowley was incorrect in not taking into consideration its experts, Ms. Garcia and Ms. Minervini, it is important to note that we never met these two employees from the district. Neither one of them had any involvement with A.S., they were not employed when she was in the district, they did not work on or advise her child study team, they never tested her, and they did not have any firsthand knowledge of A.S. In addition, we were supposed to have an IEP meeting with the district regarding the 2020-2021 school year and at the last minute, the district cancelled the meeting, and no IEP was ever presented to us. At that time, A.S. was already attending the Lewis School as well.

38. Therefore, it is respectfully requested that this Court grant our motion for summary judgment and deny the district's motion for summary judgment and its appeal and enforce this Court's Orders and Judge Crowley's Order requiring the district to comply with said Orders.

39. The Exhibits referenced in the Defendants/Counterclaimants brief and Statement of Undisputed Material Facts are all filed on the ECF Court filing


system and to the best of my knowledge, they are true and accurate copies of the original documents.

40. However, our Exhibits P48 and P49, which were referenced by Judge Crowley as being entered into evidence on page 18 of Her Honor's Opinion, [ECF Doc. No. 3], were not included in the Plaintiff's submission of the Administrative Record. Therefore, I have attached a copy of said Exhibits hereto. To the best of my knowledge, Exhibits P48 and P49 are true and accurate copies of the original documents, but personal identifying information was redacted by our attorney to protect A.S.'s identity and our identities. (Exhibits P48 and P49 attached)

41. I am signing this Certification with my initials only, as this is a special education matter and the identity of myself, my husband, and my daughter must be kept confidential.

### **CERTIFICATION**

I hereby certify under the penalty of perjury that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By:   
M.S., Defendant/Counterclaimant,  
Mother of A.S.

Dated: October 24, 2022



HASSENFELD  
CHILDREN'S  
HOSPITAL  
AT NYU LANGONE

ASExhibitP48

June 25, 2019

Re:

Dear East Brunswick Child Study Team:

is followed at our center. She has been diagnosed with ADHD, inattentive subtype, Generalized Anxiety Disorder, and has a history of a Specific Learning Disorder with Impairment in Reading. She is taking Cymbalta 40 mg per day which is helpful for her anxiety. She has been unable to tolerate medication for her symptoms of inattention.

has continued to have focus difficulties and academic struggles in her current school setting, despite getting a number of academic accommodations. I am in support of her attending a specialized school for students with learning disorders and ADHD such as the Lewis School. This school can address learning, focus and emotional needs in a small class setting. Feel free to call me at the number below with any questions. Thank you very much for your assistance with this student.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa A. Kotler".

Lisa A. Kotler, MD

Medical Director

NYU Child Study Center-NJ Office



ASExhibitP49



From: [REDACTED]  
 Subject: [REDACTED]  
 Date: [REDACTED]  
 To: [REDACTED]

[REDACTED] weeks or

-----Original Message-----

From: CONOR SCOTT [mailto:CSCOTT@ebnet.org]  
 Sent: Friday, September 28, 2018 2:47 PM  
 To: [REDACTED]  
 Cc: [REDACTED]  
 Subject: RE: [REDACTED]

Hi [REDACTED]

Sorry for the delay in responding- I was going to try to give you a call today, but the day got away from me.

Algebra 2 is a very challenging student for many students (classified and non-classified) and the rigor and pace is definitely a big jump from geometry and [REDACTED] coming from a resource center geometry class means that it's even a larger jump. The first quiz was very challenging for many students and it is my understanding that Ms. Yang will be providing an opportunity for students to re-take the quiz now that they know what skills they need to work on.

In terms of a schedule change, there would be an easy switch to swap [REDACTED] study skills with a resource center math class. If we make a change in placement based on an IEP change, we generally do not put the WP/WF on the transcript so there is no hard date on a switch. I think that this is something that we discuss at the October 8th meeting once we have more data (there is a test in Algebra on Wednesday- Ms. Yang will be reviewing on Monday and Tuesday in class and will be after school). We still not have received word from our supervisor about a permanent teacher in the class.

In terms of Ms. Chang's email address, she still does not have one. Ms. Chang was just approved by the board of education yesterday for her position. She was a sub in the district previously, but we do not give subs email addresses. She should have one set up early in the week next week. If you'd like, I can pass along any information to her or provide her with your phone number so that she can call you.

Sorry that I don't have more information, but if you would like to talk next week, I can give you a call. On a more positive note, A [REDACTED] has a 92.5 in Logo Design!

Enjoy the weekend,  
 Conor

-----Original Message-----

From: [REDACTED]  
 Sent: Thursday, September 27, 2018 4:00 PM  
 To: CONOR SCOTT <CSCOTT@ebnet.org>  
 Cc: [REDACTED]  
 Subject: [REDACTED]

Hi Conor,

Sorry to bother you again. I wish this year was starting out on a better foot. I'm sure you saw my email to Mrs Yang. At what point, do we need to consider resource Math? I don't want her failing. I don't want Mrs Yang or [REDACTED] to know that this is even an option and I'm hoping it doesn't have to be. She doesn't fit in with the kids from resource and it will really be heartbreaking to [REDACTED] if she needs to move into that. What can we do? Is there even a resource math class at that time that doesn't rearrange her schedule? Honestly, if we needed to change things, we could switch her into another study skills with a teacher with a little more experience. How much time do we have to decide? I don't want her receiving a WF. When is a permanent special ed teacher coming into her Algebra class? I wonder if that could help a bit.

On another note, I would like to be in touch with A [REDACTED] study skills teacher. I had told her that on back-to-school night. She said she didn't have a school email, but she would email when she did have one. Do you know if she has received one yet?

Thank you again for all of your support and hard work!

Best,  
 [REDACTED]

Sent from my iPhone

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ASExhibitP49



From: [REDACTED]  
 Subject: [REDACTED]  
 Date: [REDACTED]  
 To: [REDACTED]

-----Original Message-----

From: CONOR SCOTT [mailto:CSCOTT@ebnet.org]  
 Sent: Tuesday, October 02, 2018 2:34 PM  
 To: [REDACTED]  
 Subject: RE: [REDACTED]

Hi [REDACTED]

I touched base with Ms. Chang this afternoon to talk to her about [REDACTED]. She now has an email address and that she will reach out to you so that you two can be in communication. I did not see [REDACTED] today because I was at lunch, but she made it down to the counseling office and talked to one of the SAC counselors.

Ms. Chang did share that [REDACTED] was upset because she is setting up classroom rules now that she will be the permanent teacher for the rest of the year. Ms. Chang asked that all students use their class time productively to work on assignments or study since Study Skills is a graded class with credits. If students do not have work to do, she asked that they have a book to read. [REDACTED] was on her phone during class yesterday for the whole period and again today and Ms. Chang said that when she asked her to put it away and work on something, she got upset.

I am going to touch base with [REDACTED] tomorrow to make sure that we are all on the same page about the expectations in the class.

I also wanted to let you know that [REDACTED] math class now has an in-class support teacher. Mr. Arshan is a math/special education teacher who taught a Study Skills class at the same time as [REDACTED] math class. His schedule was switched so he is now in Algebra 2. He has taught the course for many years and has worked with Ms. Yang in the past so she will now have more support in the class.

Thanks,  
 Conor

-----Original Message-----

From: [REDACTED]  
 Sent: Tuesday, October 02, 2018 12:08 PM  
 To: CONOR SCOTT <CSCOTT@ebnet.org>  
 Subject: [REDACTED]

Hi Conor

I understand that [REDACTED] study skills teacher is new and may not get [REDACTED] yet. Can you please ask her gently to give [REDACTED] a little space. She really doesn't do well with a teacher on her shoulder. She can, of course, make sure she's working, but [REDACTED] just called me crying that she gets anxiety in that class. [REDACTED] also works well with positive reinforcement. Sorry to have bothered you, but I don't have her email yet. Thank you and have a nice day.

Best,

[REDACTED]  
 Sent from my iPhone

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From  
Subject  
Date  
To

**From:** CONOR SCOTT [mailto:CSCOTT@ebnet.org]

**Sent:** Tuesday, October 09, 2018 10:22 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Subject:** Re: [REDACTED]

Hi [REDACTED]

I was proctoring the SAT for a student who needs to take it during school when [REDACTED] had Study Skills, so she actually ended up with Ms. Rice.

After talking with Ms. Rice, it seems that there is still some miscommunication between [REDACTED] and Ms. Chang and we thought that it might be helpful if the four of us sat together to discuss the expectations for Study Skills and come up with a plan moving forward so that [REDACTED] is successful (if you and [REDACTED] are okay with this).

Ms. Rice and I did look at the schedule and if we were to change [REDACTED] Study Skills class, it would involve potentially moving multiple periods. Right now I'm concerned about making that move because if [REDACTED] does continue to struggle with Algebra 2 and we consider a move to resource, it might mean moving her whole schedule again, which might be disruptive to [REDACTED] learning given her difficulties with transitions.

Let me know your thoughts and we can proceed accordingly.

Conor

Get [Outlook for iOS](#)

**From:** [REDACTED]

**Sent:** Tuesday, October 9, 2018 12:19:13 PM

**To:** CONOR SCOTT

**Cc:** [REDACTED]

**Subject:** [REDACTED]

Dear Conor,

Sorry to bother you again.

[REDACTED] just called me from the bathroom crying. I told her to see you since she can't stay there. I don't know why she can't be with Mrs Chang, but she can't. I think we need to switch her class if we can. I had written to Mrs Chang yesterday asking for a study guide for the history test on Friday. She said she will get her one and help her in study skills and offered to work with her after school tomorrow, which I thought was very nice. I did tell [REDACTED] and she started to cry. There is some kind of conflict going on there and I'm not sure what/why it is. [REDACTED] has a Dr



There is some kind of conflict going on there and I'm not sure what/why it is. [REDACTED] has a [REDACTED] appt after school tomorrow so can't stay after anyway. She has never had a behavioral problem in school. She works closely with other teachers and stays after with Mrs. Yang. I'm really unsure of what to do.  
Thank you.  
Best,  
[REDACTED]

Sent from my iPhone

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